

ESTTA Tracking number: **ESTTA687376**

Filing date: **08/03/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Lytx, Inc.
Granted to Date of previous extension	08/01/2015
Address	9785 Towne Center Drive San Diego, CA 92121 UNITED STATES
Correspondence information	Karl M Steins Attorney for Opposer Steins & Associates, P.C. 2333 Camino del Rio South Suite 120 San Diego, CA 92108 UNITED STATES mail@steins-patents.com Phone:6196922004

Applicant Information

Application No	86496558	Publication date	06/02/2015
Opposition Filing Date	08/03/2015	Opposition Period Ends	08/01/2015
Applicant	Liberty Mutual Insurance Company 175 Berkeley Street Boston, MA 02116 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: A downloadable mobile device application that monitors and reports safe and unsafe driving behaviors
Class 036. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Auto insurance administration and underwriting

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2440136	Application Date	07/28/1999
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Registration Date	04/03/2001	Foreign Priority Date	NONE
Word Mark	DRIVECAM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1999/12/10 First Use In Commerce: 1999/12/10 event data recorders		


U.S. Registration No.	3945407	Application Date	11/19/2009
Registration Date	04/12/2011	Foreign Priority Date	NONE
Word Mark	DRIVECAM ONLINE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2008/07/25 First Use In Commerce: 2008/07/25 Providing an on-line searchable computer database featuring business risk mitigation and management services related to driver behavior provided via in-vehicle video, playback software, program management, reporting and expert event analysis to identify and eliminate behaviors known to increase the likelihood of collision; Providing a website featuring information relating to business risk mitigation and management for identification of risky driving behavior		

U.S. Registration No.	3945408	Application Date	11/19/2009
Registration Date	04/12/2011	Foreign Priority Date	NONE
Word Mark	DRIVECAM ONLINE		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 042. First use: First Use: 2008/07/25 First Use In Commerce: 2008/07/25 Computer services, namely, providing a website featuring information relating to computer systems and software for identification of risky driving behavior; Computer services, namely, hosting a website featuring identification of risky driving behavior; Computer services, namely, acting as an application service provider in the field of knowledge management to host computer application software for searching and retrieving information from databases and computer networks relating to risky driving behavior; Computer services, namely, providing online non-downloadable web-based software for use in the identification of risky driving behavior; processing of multimedia data, namely, interpreting collected audio, video, text and digital content and identifying segments that contain predefined key events, for review, analysis, and scoring of driver behavior and driving trends; providing temporary use of non-downloadable software for use in analyzing and scoring driving behavior
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U.S. Registration No.	3941571	Application Date	11/19/2009
Registration Date	04/05/2011	Foreign Priority Date	NONE
Word Mark	DRIVECAM ONLINE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 045. First use: First Use: 2008/07/25 First Use In Commerce: 2008/07/25 Providing a website featuring information in the field of accident investigations, namely, accident reconstruction analysis and reports; providing an on-line computer database in the field of accident investigations featuring accident reconstruction analysis and reports; Providing a website featuring information relating to accident investigations for identification of risky driving behavior		


U.S. Registration No.	3279967	Application Date	08/31/2006
Registration Date	08/14/2007	Foreign Priority Date	NONE
Word Mark	DRIVECAM		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 2005/11/10 First Use In Commerce: 2005/11/10 Processing of multimedia data, namely, interpreting collected audio, video, text and digital content and identifying segments that contain predefined key events, for review, analysis, and scoring of driver behavior and driving trends; providing a database of driver behavior and driver behavior analytics establishing a driver risk index and driver risk scores; providing temporary use of non-downloadable software for use in analyzing and/or scoring driving behavior Class 045. First use: First Use: 2005/11/10 First Use In Commerce: 2005/11/10 Accident reconstruction analysis and reports


U.S. Registration No.	3258763	Application Date	08/31/2006
Registration Date	07/03/2007	Foreign Priority Date	NONE
Word Mark	DRIVECAM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2004/03/30 First Use In Commerce: 2004/03/30 Newsletter directed to driver risk management, improving driver safety and reducing risky driving behavior		

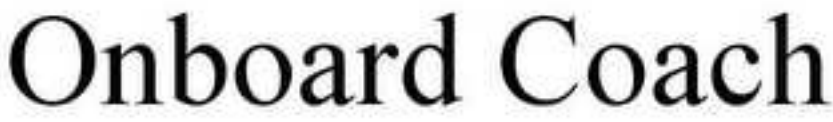
U.S. Registration No.	3258766	Application Date	08/31/2006
Registration Date	07/03/2007	Foreign Priority Date	NONE
Word Mark	DRIVECAM		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2003/08/20 First Use In Commerce: 2003/08/20 Educational services, namely, coaching services in the field of driver risk management, improving driver safety and reducing risky driving behavior; driver safety training

U.S. Registration No.	3376104	Application Date	08/31/2006
Registration Date	01/29/2008	Foreign Priority Date	NONE
Word Mark	DRIVECAM		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 2001/08/01 First Use In Commerce: 2001/08/01 Business risk management and mitigation services related to driver behavior provided via in-vehicle video, playback software, management of programs to improve driver safety, and reporting and expert event analysis to identify and eliminate behaviors known to increase the likelihood of collision</p> <p>Class 036. First use: First Use: 2001/08/01 First Use In Commerce: 2001/08/01 Financial risk management consulting services related to driver behavior</p> <p>Class 041. First use: First Use: 2001/08/01 First Use In Commerce: 2001/08/01 Providing driving behavior management services, namely, driver safety counseling for the purpose of changing driver behavior through use of a driving feedback system</p>		

U.S. Registration No.	4454419	Application Date	05/03/2013
Registration Date	12/24/2013	Foreign Priority Date	NONE
Word Mark	DRIVECAM		

Design Mark	
Description of Mark	The mark consists of the stylized wording "DRIVECAM" and a design consisting of three interlocked, football-shaped rings having a small transparent circle located along each ring; the top ring is dark blue, the right ring is light blue and the bottom ring is gray; the wording "DRIVECAM" appears to the right of the design, and the letters "DRIVE" are dark blue and the letters "CAM" are gray.
Goods/Services	Class 009. First use: First Use: 2011/05/01 First Use In Commerce: 2011/07/01 Video event recorders; computer software for analyzing data from video event recorders for use in the field of driver risk management, improving driver safety and reducing risky driving behavior; driving performance management software Class 036. First use: First Use: 2011/05/01 First Use In Commerce: 2011/07/01 Financial risk management consulting services related to driver behavior, namely, management and reduction of the financial risk created by drivers by reducing risky driving behavior after a review of in-vehicle driver behavior

U.S. Registration No.	4238376	Application Date	03/02/2011
Registration Date	11/06/2012	Foreign Priority Date	NONE
Word Mark	ONBOARD COACH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2011/03/01 First Use In Commerce: 2011/03/01 Video event recorders; computer software for analyzing data from video event recorders for use in the field of driver risk management, improving driver safety and reducing risky driving behavior; driving performance management software Class 036. First use: First Use: 2011/03/01 First Use In Commerce: 2011/03/01 Financial risk management consulting services related to driver behavior, namely, management and reduction of the financial risk created by drivers by reducing risky driving behavior		

U.S. Application No.	86326814	Application Date	07/02/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FLEXCOACH		

Design Mark	<h1>FlexCoach</h1>
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 0 First Use In Commerce: 0 Business consulting services related to workplace and driver safety, workplace and driver productivity, regulatory compliance, and workplace and driver operational risk events; Business consulting services in the field of business information and analytics, namely, electronic reporting of business information, namely, the detecting, classifying and reporting of safety, productivity and operational risk events

Attachments	77876480#TMSN.png(bytes) 77876489#TMSN.png(bytes) 77876512#TMSN.png(bytes) 78965514#TMSN.png(bytes) 78965527#TMSN.png(bytes) 78965559#TMSN.png(bytes) 78965479#TMSN.png(bytes) 85923018#TMSN.png(bytes) 85256111#TMSN.png(bytes) 86326814#TMSN.png(bytes) dri70s57.notice of opposition.pdf(86271 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Karl M. Steins/
Name	Karl M Steins
Date	08/03/2015

**In the United States Patent and Trademark Office
Before the Trademark Trials and Appeals Board**

Atty. Docket #: DRI70-S57

Lytx, Inc.

Opposer,

vs

Liberty Mutual Insurance Company

Applicant

NOTICE OF OPPOSITION

Opposition No.:

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Dear Sir:

Lytx, Inc. believes that it will be damaged by registration of Applicant's mark shown in Application Serial Number 86/496,558 and, therefore, opposes registration of Applicant's mark on the following grounds:

1. Liberty Mutual Insurance Company (herein called "Applicant") has filed an application to register "DRIVE COACH" for "a downloadable mobile device application that monitors and reports safe and unsafe driving behaviors" in IC009 and "Auto insurance administration and underwriting" in IC036. The application, Serial Number 86/496,558, filed on 1/6/2015 was filed as an Intent to Use application that does not allege a date of first use or first use in commerce. The mark was published for opposition on 6/2/2015, an extension to file the present opposition was granted, to expire on 8/3/2015. Lytx, Inc. (herein called "Opposer") is a Delaware corporation, having its principle place of business at 9785 Towne Center Drive, San Diego CA 92121, and has since at least as early as 2001 used its "DRIVECAM" mark, its "DRIVECAM ONLINE" mark, its "ONBOARD COACH" mark, and its "FLEXCOACH" mark in connection with the following goods and/or services:

Event data recorders. Video event recorders; computer software for analyzing data from video event recorders for use in the field of driver risk management, improving driver safety and reducing risky driving behavior; driving performance management software. (IC009)

Newsletter directed to driver risk management, improving driver safety and reducing risky driving behavior. (IC016)

Business risk management and mitigation services related to driver behavior provided via in-vehicle video, playback software, management of programs to improve driver safety, and reporting and expert event analysis to identify and eliminate behaviors known to increase the likelihood of collision. Business consulting services related to workplace and driver safety, workplace and driver productivity, regulatory compliance, and workplace and driver operational risk events; Business consulting services in the field of business information and analytics, namely, electronic reporting of business information, namely, the detecting, classifying and reporting of safety, productivity and operational risk events. Providing an on-line searchable computer database featuring business risk mitigation and management services related to driver behavior provided via in-vehicle video, playback software, program management, reporting and expert event analysis to identify and eliminate behaviors known to increase the likelihood of collision; Providing a website featuring information relating to business risk mitigation and management for identification of risky driving behavior. (IC035)

Financial risk management consulting services related to driver behavior. Financial risk management consulting services related to driver behavior, namely, management and reduction of the financial risk created by drivers by reducing risky driving behavior. (IC036)

Providing driving behavior management services, namely, driver safety counseling for the purpose of changing driver behavior through use of a driving feedback system. Educational services, namely, coaching services in the field of driver risk management, improving driver safety and reducing risky driving behavior; driver safety training. (IC041)

Computer services, namely, providing a website featuring information relating to computer systems and software for identification of risky driving behavior; Computer services, namely, hosting a website featuring identification of risky driving behavior; Computer services, namely, acting as an application service provider in the field of knowledge management to host computer application software for searching and retrieving information from databases and computer networks relating to risky driving behavior; Computer services, namely, providing online non-downloadable web-based software for use in the identification of risky driving behavior; processing of multimedia data, namely, interpreting collected audio, video, text and digital content and identifying segments that contain predefined key events, for review, analysis, and scoring of driver behavior and driving trends; providing temporary use of non-downloadable software for use in analyzing and scoring driving behavior. Processing of multimedia data, namely, interpreting collected audio, video, text and digital content and identifying segments that contain predefined key events, for review, analysis, and scoring of driver behavior and driving trends; providing a database of driver behavior and driver behavior analytics establishing a driver risk index and driver risk scores; providing temporary use of non-downloadable software for use in analyzing and/or scoring driving behavior. (IC042).

Providing a website featuring information in the field of accident investigations, namely, accident reconstruction analysis and reports; providing an on-line computer database in the field of accident investigations featuring accident reconstruction analysis and reports; Providing a

website featuring information relating to accident investigations for identification of risky driving behavior. (IC045)

<u>Registration/Serial No.</u>	<u>Trademark</u>
2,440,136	DRIVECAM
3,945,407	DRIVECAM ONLINE
3,945,408	DRIVECAM ONLINE
3,941,571	DRIVECAM ONLINE
3,279,967	DRIVECAM
3,258,763	DRIVECAM
3,258,766	DRIVECAM
3,376,104	DRIVECAM
4,454,419	DRIVECAM (and design)
4,238,376	ONBOARD COACH
86/326,814	FLEXCOACH

2. Opposer produces, markets and installs video and event recorders in vehicles of others. Opposer further provides data analysis, reporting and consulting services related to the performance of drivers of vehicles having said video and event recorders therein. This equipment is specifically directed at reporting on, and ultimately reducing risky driving behavior for the purpose of reducing client cost due to driver risky driving behavior.

3. Opposer's goods and services in connection with which Opposer uses its "DRIVECAM," "DRIVECAM ONLINE," "ONBOARD COACH," AND "FLEXCOACH" marks have achieved a reputation for excellence and high quality and have received wide acclaim over the years. Opposer's "DRIVECAM," "DRIVECAM ONLINE," "ONBOARD COACH," AND "FLEXCOACH" have been, and continue to be, very popular within the market of driver safety and driver cost reduction. These marks have come to symbolize Opposer's goods and services.

4. Since 2001, Opposer has spent a substantial amount of money advertising and promoting its driver risk reduction goods and services under its "DRIVECAM," "DRIVECAM

ONLINE," "ONBOARD COACH," AND "FLEXCOACH" marks, which has resulted in goodwill of great value for its mark. As a result of Opposer's use of its "DRIVECAM," "DRIVECAM ONLINE," "ONBOARD COACH," AND "FLEXCOACH" marks, these marks have become extremely well-known to the general public and the trade, and identifies and distinguishes the source and origin of Opposer's video event recorders and services related thereto. Opposer's "DRIVECAM," "DRIVECAM ONLINE," "ONBOARD COACH," AND "FLEXCOACH" marks have become extremely valuable to Lytx, Inc. with substantial commercial appeal.

5. As a result of Opposer's long use of the "DRIVECAM" and "ONBOARD COACH" marks and the wide recognition achieved for the marks, these marks have become famous marks, and the public has come to associate these marks with goods or services originating with, emanating from, sponsored by, or otherwise associated with, or approved by, Opposer. Thus Applicant's use of "DRIVE COACH" on any type of goods or services related to drivers, driver performance reporting or the financial implications of risky driving behavior would dilute the distinctiveness of Opposer's "DRIVECAM" and "ONBOARD COACH" marks.

6. Applicant is not now and has never been authorized by Opposer to use the "DRIVE COACH" in connection with its products or services.

7. Upon information and belief, Applicant has adopted the "DRIVE COACH" in bad faith, with full knowledge of the prior use of the "DRIVECAM," "DRIVECAM ONLINE," "ONBOARD COACH," AND "FLEXCOACH" marks, and with the intent to capitalize on the high name recognition and broad appeal of Opposer's marks.

8. Upon information and belief, Applicant has made no use in the United States or in interstate commerce of the "DRIVE COACH" before January 6, 2015. Upon information and belief, any alleged use by Applicant began after Opposer's "DRIVECAM" and "ONBOARD COACH" marks had become famous.

9. The primary features of Applicant's mark are identical to Opposer's mark and is likely, when applied to the goods/services of Applicant, to cause confusion, or to cause mistake, or to deceive the public into the mistaken belief that the goods offered and advertised by Applicant have their origin with Opposer, and that such goods are approved, endorsed, sponsored by, or in some way associated with, Opposer.

10. If Applicant is permitted to register "DRIVE COACH" for goods or services that the public believes are associated with Opposer, such registration would be likely to cause confusion, or to cause mistake or to deceive and would suggest falsely a connection with Opposer, causing great injury to Opposer.

11. Opposer would be injured by granting Applicant a certificate of registration for its "DRIVE COACH" mark, because its primary features are identical to Opposer's "DRIVECAM" and "ONBOARD COACH" marks, and the goods/services for which Applicant uses its mark are similar or related to the types of goods/services for which Opposer uses its "DRIVE COACH" mark and is likely, when applied to the goods/services of Applicant, to cause confusion, or to cause mistake, or to deceive and would suggest falsely a connection with Opposer.

12. Opposer would be injured further if such registration were granted to Applicant, because it would cause dilution of the distinctive quality of Opposer's famous "DRIVECAM" and "ONBOARD COACH" marks in violation of 15 U.S.C. §1125(c), and would damage Opposer's valuable rights in its "DRIVECAM" and "ONBOARD COACH" marks. Applicant should not be permitted to usurp the value of Opposer's goodwill in its "DRIVECAM" and "ONBOARD COACH" marks in such a manner.

WHEREFORE, Opposer, by and through its counsel, respectfully prays that its opposition be sustained and that Applicant's registration be denied.

Dated: 8/3/2015

Respectfully submitted,

STEINS & ASSOCIATES

By /Karl M. Steins/
Karl M. Steins
Registration No. 40,186
2333 Camino del Rio South, Suite 120
San Diego, California 92108
Telephone: (619) 692-2004
Attorney for Opposer

Certificate of Service

It is hereby certified that a copy of the above Notice of Opposition is being forwarded by first class mail on 8/3/2015, to Rebecca Lederhouse, BAKER & MCKENZIE LLP, 300 E RANDOLPH ST STE 5000, CHICAGO, ILLINOIS 60601-6342, attorney for Applicant.

/Karl M. Steins/
Karl M. Steins